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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Katherine Wasmund,

Plaintiff,

v.

OneMain Financial Group, LLC,

Defendant.

Case No.:

**Complaint for Damages and
Injunctive Relief under the
Telephone Consumer Protection
Act, 47 U.S.C. § 227, et seq.**

Jury trial demanded

Introduction

1. Katherine Wasmund (“Plaintiff”), by counsel, brings this action for damages resulting from the unlawful actions of OneMain Financial Group, LLC (“Defendant”), in negligently and/or intentionally contacting Plaintiff on

1 Plaintiff's cellphone, in violation of the Telephone Consumer Protection Act,
2 47 U.S.C. § 227, et seq. (the "TCPA"), thereby invading Plaintiff's privacy.

- 3 2. The TCPA was designed to prevent calls like the ones described within this
4 complaint, and to protect the privacy of citizens like Plaintiff. "Voluminous
5 consumer complaints about abuses of telephone technology – for example,
6 computerized calls dispatched to private homes – prompted Congress to pass
7 the TCPA." *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
8 3. In enacting the TCPA, Congress intended to give consumers a choice as to how
9 creditors and telemarketers may call them, and made specific findings that
10 "[t]echnologies that might allow consumers to avoid receiving such calls are
11 not universally available, are costly, are unlikely to be enforced, or place an
12 inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward
13 this end, Congress found that

14 [b]anning such automated or prerecorded telephone calls
15 to the home, except when the receiving party consents to
16 receiving the call or when such calls are necessary in an
17 emergency situation affecting the health and safety of the
18 consumer, is the only effective means of protecting
19 telephone consumers from this nuisance and privacy
invasion.

- 20 4. *Id.* at § 12; *see also Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
21 3292838, at* 4 (N.D. Ill. Aug. 10, 2012) (citing Congressional findings on
22 TCPA's purpose).
23 5. Congress also specifically found that "the evidence presented to the Congress
24 indicates that automated or prerecorded calls are a nuisance and an invasion of
25 privacy, regardless of the type of call. . . ." *Id.* at §§ 12-13; *see also Mims*, 132
26 S. Ct. at 744.
27

6. Plaintiff alleges as follows upon personal knowledge as to Plaintiff's own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by Plaintiff's attorneys.

7. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.

8. Unless otherwise stated, all the conduct engaged in by Defendant took place in Nevada.

9. Any violations by Defendant was knowing, willful, and intentional, and Defendant did not maintain procedures reasonably adapted to avoid any such violations.

Jurisdiction and Venue

10. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331 (federal question jurisdiction).

11. This action arises out of Defendant's violations of the TCPA.

12. Defendant is subject to personal jurisdiction in Nevada, as it conducts business in Nevada and attempted to contact Plaintiff in Nevada.

13. Venue is proper pursuant to 28 U.S.C. § 1391 because all the conduct giving rise to this complaint occurred in Nevada.

Parties

14. Plaintiff is a natural person who lives in Clark County, Nevada.

15. Plaintiff is, and at all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153(39).

16. Defendant is a debt collection company and is a "person," as defined by 47 U.S.C. § 153(39).

17. Plaintiff is informed and believes, and thereon alleges, that Defendant is a company and owner (or frequent user) of one or more of the telephone numbers

1 used by Defendant to make telephone calls to Plaintiffs in violation of the
2 TCPA.

3 **Factual Allegations**

4 18. Within four years prior the filing of this complaint, without any prior express
5 consent to call, Defendant called Plaintiff's cellphone numerous times.

6 19. Specifically, in early 2020, Plaintiff instructed Defendant to stop contacting
7 her on her cellphone. In this way, Plaintiff revoked any consent that
8 Defendant may have previously had to call Plaintiff on her cellphone.

9 20. Nevertheless, Defendant continued to repeatedly contact Plaintiff on her
10 cellphone, including in March 2020, knowing that Plaintiff demanded that the
11 calls and text messages cease.

12 21. Defendant placed these calls using an automatic telephone dialing system
13 ("ATDS") and/or with an artificial or prerecorded voice, as prohibited by 47
14 U.S.C. § 227(b)(1)(A).

15 22. These telephone calls constituted calls that were not for emergency purposes as
16 defined by 47 U.S.C. § 227 (b)(1)(A)(i).

17 23. The ATDS used by Defendant has the capacity to store or produce telephone
18 numbers to be called, using a random or sequential number generator.

19 24. The ATDS used by Defendant also has the capacity to dial telephone numbers
20 stored as a list or in a database without human intervention.

21 25. Defendant's calls were placed to a telephone number assigned to a cellphone
22 service for which Plaintiff incurred a charge pursuant to 47 U.S.C. § 227(b)(1).

23 26. The calls were unwanted by Plaintiff.

24 27. Defendant did not have prior express written consent to place the calls to
25 Plaintiff.
26
27

1 28. Through Defendant's conduct, Plaintiff suffered an invasion of a legally
2 protected interest in privacy, which is specifically addressed and protected by
3 the TCPA.

4 29. Plaintiff was personally affected by Defendant's aforementioned conduct
5 because Plaintiff was frustrated and distressed that Defendant interrupted
6 Plaintiff with an unwanted calls using an ATDS.

7 30. Defendant's calls forced Plaintiff to live without the utility of Plaintiff's
8 cellphone by occupying the cellphone with one or more unwanted calls, causing
9 a nuisance and lost time.

10 31. Defendant's calls to Plaintiff's cellphone numbers were unsolicited by Plaintiff
11 and without Plaintiff's permission or consent.

12 32. Plaintiff is informed and believes and thereupon allege, that the calls were made
13 by Defendant and/or Defendant's agent(s), with Defendant's permission,
14 knowledge, control and for Defendant's benefit.

15 33. Through the aforementioned conduct, Defendant has violated 47 U.S.C. §
16 227(b)(1)(A)(iii).

17 34. Further, Defendant's violations also caused Plaintiff to suffer a real and concrete
18 harm because when Defendant called Plaintiff, Plaintiff's time was wasted on
19 phone calls with Defendant when Defendant had no right to contact Plaintiff.
20 Defendant also consumed and wasted Plaintiff's cellphone battery life. Plaintiff
21 also suffered from frustration and annoyance from Defendant's pre-recorded
22 voice which the TCPA was enacted to prevent. *See, e.g., Mey v. Got Warranty,*
23 *Inc.*, No. 5:15-CV-101, 2016 U.S. Dist. LEXIS 84972, at *8 (N.D.W. Va. June
24 30, 2016) ("[S]uch calls also cause intangible injuries, regardless of whether the
25 consumer has a prepaid cell phone or a plan with a limited number of minutes.
26 The main types of intangible harm that unlawful calls cause are (1) invasion of
27 privacy, (2) intrusion upon and occupation of the capacity of the consumer's

cell phone, and (3) wasting the consumer's time or causing the risk of personal injury due to interruption and distraction.”).

First cause of action

Negligent Violations of the TCPA

47 U.S.C. § 227, et seq.

35. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

36. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227, et seq.

37. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq, Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

38. Plaintiff is also entitled to and seek injunctive relief prohibiting such conduct in the future.

Second cause of action

Knowing and/or Willful Violations of the TCPA

47 U.S.C. § 227, et seq.

39. Plaintiff incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

40. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227, et seq.

41. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq, Plaintiff is entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(C).

1 42. Plaintiff is also entitled to and seek injunctive relief prohibiting such conduct
2 in the future.

3 **Prayer for relief**

4 43. WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and
5 Plaintiff be awarded damages from Defendant, as follows:

- 6 • Award statutory damages of \$500.00 for each and every negligent
7 violations of 47 U.S.C. § 227(b)(1), pursuant to 47 U.S.C. §
8 227(b)(3)(B);
- 9 • Award statutory damages of \$1,500.00 for each and every knowing
10 and/or willful violations of 47 U.S.C. § 227(b)(1), pursuant to 47
11 U.S.C. § 227(b)(3)(C);
- 12 • Injunctive relief prohibiting such conduct in the future, pursuant to
13 47 U.S.C. § 227(b)(3)(A); and
- 14 • Any other relief that this Court deems just and proper.

15 **Jury Demand**

16 44. Pursuant to the seventh amendment to the Constitution of the United States of
17 America, Plaintiff is entitled to, and demands, a trial by jury.

18 Dated: May 29, 2020.

19 Respectfully submitted,

20 **KIND LAW**

21 /s/ Michael Kind

22 Michael Kind, Esq.

23 8860 South Maryland Parkway, Suite 106

24 Las Vegas, Nevada 89123

25 *Attorney for Katherine Wasmund*